

SUNSET REVIEW

OF THE

MEASUREMENT STANDARDS ACT

Submitted by
The Colorado Department of Regulatory Agencies
Office of Policy & Research
June 1994

July 29, 1994

The Honorable Vickie Agler, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, CO 80203

Dear Representative Agler:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Measurement Standards Act of the Department of Agriculture. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct a analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is a need for the regulation provided under 35-14-131, C.R.S. The report also discusses the effectiveness of the department and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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EXECUTIVE SUMMARY

The Department of Regulatory Agencies has concluded its sunset review of the licensing function of the Commissioner of the Department of Agriculture with regards to the Measurement Standards Act. At this point, we want to clarify the actual statutory sections that were reviewed because there was a mistake in § 35-14-134 - Repeal - review of functions. This section states that several sections and subsections are repealed effective July 1, 1995, and prior to such repeal, the licensing functions of the department shall undergo a sunset review. This section incorrectly identifies §§ 35-14-131(1)(d), (1)(j), and (1)(m) as three subsections that are to be repealed. There are no such subsections in this statute. We believe this was a misprint and the actual subsections that are subject to repeal and review are §§ 35-14-131 **(2)**(d), **(2)**(j), and **(2)**(m), C.R.S.. These sections deal with licensing.

OPR recommends that the licensing of measuring and moisture-testing devices, and certifying weighmasters be continued. These licenses and certification programs protect both consumers and businesses. Accurate devices and competent weighers promote equity and fairness in commercial transactions. This is a legitimate area in which the government should address through regulation.

This report will make recommendations to improve the Measurement Standards Act. For example, there are several sections of the statute that are too detailed which hampers the responsiveness of the Department when they want to address problems and issues. OPR recommends that these sections be repealed and the Department address these issues by promulgating rules and regulations.

OPR also recommends that licensing and testing fees be removed from statute and instead be set by the Agricultural Commission. All money collected from license fees, testing fees, and civil fines go to the General Fund. The measurement standard program receives its funding from the General Fund. It was the intent of the legislature, however, that fees collected by the Department should cover the operational costs of the program being regulated. But, the current fees in the statute do not do this and the Department cannot revise them without proposing legislation.

BACKGROUND

Government interest and supervision of measuring devices and measurement standards have been around for a very long time. Throughout history, governments have thought it their duty to protect their citizenry against fraudulent transactions in everyday commerce. Even Charlemagne cautioned citizens that "all should have equal and correct measurements and just and equal weights in the cities and in the monasteries."¹ Governments concerned themselves with safeguarding the proper manufacture and use of weights and measures, and urging uniformity of standards within their territory. When private businesses began making weights and scales in medieval Europe, a government-appointed adjuster inspected such devices for accuracy. A mark was affixed to the instrument to certify it had passed government inspection.

The founders of our country believed weights and measures were important enough to address it in the United States Constitution. Article I, Section 8, paragraph 5 of the United States Constitution vests power in Congress to "fix the Standard of Weights and Measures." In 1838, Congress directed the Secretary of the Treasury to "cause a complete set of all weights and measures adopted as standards . . . for the use of the customs houses, to be delivered to the Governor of each state . . . that uniform standard . . . may be established through the United States."

The National Bureau of Standards was created in 1901 as part of the United States Department of Commerce. In 1988, Congress replaced the National Bureau of Standards with the National Institute of Standards and Technology ("NIST"). NIST has the statutory responsibility to achieve "cooperation with the States in securing uniformity of weights and measures laws and methods of inspection."² It works toward this goal with the National Conference on Weights and Measures ("NCWM"), an association made up of state and local weights and measures officials as well as industry representatives and consumer groups. Together they develop and maintain the Uniform Laws and Regulations, NIST Handbook 44, and NIST Handbook 133, which is a guideline for checking the net contents of packaged goods. These handbooks are published annually and they specify guidelines adopted by NCWM for state laws regarding measurement standards and technical requirements for weighing and measuring devices.

The purpose of promulgating uniform laws and regulations is "to achieve, to the maximum extent possible, standardization in weights and measures laws and regulations among the various States and local jurisdictions in order to facilitate trade between the States, permit fair competition among businesses, and provide uniform and sufficient protection to all consumers in commercial weights and measures practices." Adoption of these regulations is not mandatory. A state or local jurisdiction may adopt any or all portions of the handbook, and may amend it as necessary to address local concerns. Enforcement of weights and measures laws rests with the jurisdiction adopting the standards. In Colorado, enforcement rests with the state's Department of Agriculture, Measurement Standards Section.

COLORADO HISTORY

Colorado first enacted a Weights and Measures statute in 1953. In that statute, state standards of weights and measures were adopted. They were in conformity with and certified by the National Bureau of Standards. Since its inception, enforcement of the weights and measures law has vested in the Colorado Department of Agriculture. The law was repealed and re-enacted in 1983 and was renamed the "Measurement Standards Act of 1983."

This section of the Colorado Department of Agriculture (hereinafter "the Department") licenses all weighing and measuring devices in commercial use and certifies individuals operating public scales. It also performs annual inspections on commercial measuring devices to test for accuracy. The State Metrology Laboratory maintains custody of Colorado's official weight and measure standards, and the laboratory provides testing, certification, and calibration of mass, frequency, length, and volume for public and private agencies that require standards traceable to the National Institute for Standards and Technology. This statute also requires the Department to test packages for truth in labeling; however, that part of the statute is not subject to this sunset review.

The Measurement Standards Section is a part of the Inspection and Consumer Services Division. The division utilizes a multiple-inspection program through its Technical/Field Services Section. This section is responsible for all field inspections, testing, and/or sampling for the Measurement Standards (small devices), Meat Inspection, Eggs, Feed, and Fertilizer programs. For example, when an inspector enters a grocery store, he will examine the scales for accuracy, test packaged goods for truth in labeling, inspect eggs for cleanliness, cracks, and correct grading, and perhaps, if the store does custom slaughtering, examine the butcher shop area for adherence to meat processing regulations.

The Measurement Standards Section also has large scale testing units. These units examine the accuracy of scales that weigh such items as trucks and railroad cars.

SUMMARY OF STATUTE AND RULES

There is both certification and licensing under this statute.

WHO AND WHAT IS REGULATED

- | | |
|---|---------------|
| 1. Certified weighers | Certification |
| 2. Commercial weighing and measuring devices | Licensed |
| 3. Moisture-testing devices | Licensed |
| 4. Servicemen | Licensed |
| 5. Salesmen
(Installers are licensed as servicemen/salesmen) | Licensed |

Certified Weigher

A certified weigher is a person who works for a public scale company. Only certified weighers may operate public scales. There is no statutory definition for a public scale, but the Department does have a working definition. They consider a scale to be public if the **primary** source of income for the business is to weigh items for customers. Examples of uses for public scales are

1. Truckers who need to know the weight of their load. These scales are often found at truck stops;
2. Moving companies who's fee is based in part on the weight of the article that is being shipped;
3. Recyclers who do not have their own scales;
4. Those involved with farm products and commodities who do not have their own scales;
5. Building contractors who do not have their own scales;
6. Dispute resolution. The public scale company may be used to resolve disputes between parties. Each party may have their own scales but their scales do not agree.

The Colorado Department of Highways requires that contractors provide their own scales or use commercial scales, and that only certified weighers operate scales when doing a job for construction companies. ("State Department of Highways Standard specifications for Road and Bridge Construction - 1991, " section 109.1.)

Certification Requirements

An applicant must meet both statutory and regulatory qualifications in order to become a certified weigher. A certified weigher must renew his license every five years. The statutory criteria are:

1. A citizen of the United States or a person who has declared his intention of becoming such a citizen;
2. A resident of Colorado;
3. Of good moral character.

The regulatory criteria are:

1. Applicants must have completed apprentice training by a competent scale operator on procedures for operating scales.
2. Applicants with a minimum of six months continuous weighing experience will be exempt from further training.
3. Applicants that do not provide evidence of training or experience shall be subject to an interview by a measurement standards official.

(Actually, Measurement Standards interviews every applicant to determine if the applicant is qualified. They ask situational questions to test the applicant's knowledge.)

The Department furnishes certified weighers with an instruction sheet that explain in detail the procedures they must follow in order to be in compliance with the statute and regulations. These procedures are based on requirements for weighmasters listed in NIST Handbook 44. The department adopted these requirements by reference as allowed in § 35-14-105, C.R.S.

A certified weigher must keep a daily register in which he enters every transaction. The statute specifies what information the certified weigher must register. This register must be kept for two years, and it must be open at all times for inspection by employees of the Measurement Standards Section of the Department. Inspectors check these registers when they examine the public scales for accuracy.

The following persons are exempt from becoming certified weighers: (1) weights and measures officer acting within official duties; (2) A person weighing property produce, commodities, or articles that he or his employer is buying or selling; and, (3) A person weighing in conformity with federal or state laws relative to warehousemen or processors.

Certified Weigher License Fee

The license fee for certified weighers is \$5.00 and is set in statute § 35-14-127(8), C.R.S.. The fee was last increased in 1983.

Commercial Measuring Devices

Commercial weighing and measuring devices are statutorily defined as devices commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption that are sold or offered or exposed for sale, hire, or award or in computing any basic charge or payment for services rendered on the basis of weight, measure, or count. § 35-14-102(4), C.R.S..

Any type of measuring device must be approved for use in Colorado by the Department. The Department adhere to the guidelines of NIST Handbook 130 when evaluating whether or not a particular type of measuring device should be available for use in this state. This is known as "Type Evaluation." If a measuring device is approved for use, it receives a "Certificate of Conformance."

Licensing Requirements

Before any person operates any scale, textile meter, or cordage meter for commercial purposes (hereinafter "commercial measuring devices"), he must get a license from the Department. § 35-14-127, C.R.S.. The statute states that it is the person who operates the scale who must secure a license; however, practically it is the business in which the device is operated that is licensed, and each device in the company is licensed individually. The application for a Measurements standards license requires the following information: (1) The manufacturers rated capacity for the device; (2) The make of device; (3) The serial number for scale measuring 5,000 pounds and over; and (4) The location of device.

The license is issued when the application is received and the fee is paid. The license must be renewed annually. The device does not have to be inspected before the license is issued. The statute does not confer authority to the Department to revoke a license for a commercial measuring device.

Exemptions

Some commercial measuring devices are exempt from licensing. These are (1) Pennyweight scales; (2) Scales used in-plant to determine ingredients or other services where the end product or service is determined by some means other than the in-plant scale; (3) United States Post Office scales; (4) Postal scales used for determining postal fee and where U.S. postal service makes final determination of fee; and (5) Pharmacist's prescription scale with less than a four-ounce capacity.

Commercial measuring devices license fees

All license fees are set in statute, § 35-14-127(4) - (7), C.R.S.. These license fees were last changed in 1983. They are as follows:

Scales with a capacity of 80,001 pounds and over	\$100.00
Scales with a capacity of 30,001 pounds through 80,000 pounds	\$ 75.00
Scales with a capacity of 10,001 pounds through 30,000 pounds	\$ 40.00
Scales with a capacity of 2,001 pounds through 10,000 pounds	\$ 20.00
Scales with a capacity of 451 pounds through 2,000 pounds	\$ 12.00
Scales with a capacity of 76 pounds through 450 pounds	\$ 7.00
Scales with a capacity of 75 pounds or less	\$ 5.00
Belt conveyor and in-motion railroad scales	\$125.00
Textile meters	\$ 5.00
Cordage meters	\$ 5.00

Inspections

The statute requires that every commercial measuring device be inspected for accuracy at least once every twelve months, and more often if necessary. If the device needs only minor adjustments in order for it to be accurate, the statute requires the inspector to make those minor adjustments.

Sometimes a commercial measuring device is of such design, construction, or location that special equipment or an abnormal amount of labor is required to inspect it. In such circumstances the scale owner must provide the equipment, accessories, and labor. The statute restricts what the Department may charge when passenger vehicles, light duty pick-up trucks, or test trucks are needed to perform any scale tests.

Commercial Scales Inspection Results

Fiscal Year	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93
Large Scales	3919	3983	3645	3530	4094	4336	3871	3892	5277
Approved	3331	3385	3135	2965	3593	3718	2506	2649	4037
Rejected	588	598	510	565	501	618	1365	1245	1204
% Rejected	15	15	14	16	12.2	13.8	32.8	32	22.8
Small Scales	43341	31191	28761	31887	27904	29045	32222	30034	26893
Approved	41694	30193	27726	30739	26816	28028	31016	27753	23896
Rejected	1647	998	1035	1148	1088	1017	1206	2281	2997
% Rejected	3.8	3.2	3.6	3.6	3.9	3.5	3.7	7.6	11.1

Moisture-Testing Devices

A moisture-testing device is statutorily defined in § 35-14-102(19), C.R.S. as equipment and accessories required for determining the moisture content in a grain sample. It is important to be able to ascertain the moisture content in a grain sample because it is one factor used to grade grain. The grade given to grain affects its price, marketing, and use.

Licensing Requirements

Any moisture-testing device that is used commercially must be licensed. A device is considered to be used commercially if the results of the device are a factor in determining:

1. The price of the commodity tested for moisture content; or
2. Drying or other processing charge based upon moisture content of the commodity.

In order to get a license, the applicant must submit an application and pay the fee. Before a moisture-testing device may be used in Colorado, it must be approved by the Commissioner.

Moisture-testing Device License Fee

The annual license fee for moisture meters is \$20.00, and is set in statute at § 35-14-127(7), C.R.S. The last time this fee was increased was in 1983.

Moisture-testing Device Inspection Results

<i>Fiscal Year</i>	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93
Moisture Meters	63	175	180	175	110	228	297	50	287
Approved	55	140	154	148	100	218	294	48	281
Rejected	8	35	26	27	10	0	3	4	6
% Rejected	12.7	20	14.4	15.7	9.1	4.4	1	0.8	2.1

Sales and Service Licenses

According to the statute, salesmen and servicemen of measuring devices licensed for commercial use must also be "licensed" by the Department; however, only one license is required for a business that employs more than one salesman and/or serviceman. There are three categories of servicemen's licenses that are classified according to scale capacity. If a person is a licensed serviceman, he does not need to get a separate license in order to sell measuring devices.

The statute also provides an exemption to licensing. Anyone may perform repairs or service on any measuring device without first obtaining a license from the Department. They may not, however, remove any condemned or work order tag placed on any measuring device.

Licensing requirements

Under § 35-14-123(1), C.R.S., the only requirement for licensing is to submit a written application to the Department upon forms provided by them. Regulations, as authorized under § 35-14-107(o), C.R.S., define minimum qualifications for obtaining a **serviceman** license. These qualifications are:

1. An applicant must have satisfactorily completed a factory training course to service the devices he intends to service; and
2. An applicant must have a minimum of 12 months training by a competent scale serviceman.

The applicant must submit evidence that he has satisfied the above requirements. There is no regulation that defines minimum qualifications for obtaining a **salesman** license.

Both licenses must be renewed every five years. In the past, the licensee had to furnish a bond for \$1,000.00 for the faithful performance of his duties. In 1987, the bonding requirement was removed from the statute.

Servicemen/Salesmen License Fee

The license fee for servicemen and salesmen is \$5.00, and is set in statute at § 35-14-127(9) and (10), C.R.S.. The last time this fee was increased was in 1983.

Administrative Procedures

Servicemen must comply with administrative procedures when they repair any measuring device. Section 35-14-123, C.R.S. describes in detail what test weights and standards a serviceman must complete, and what administrative paperwork he must use in order to conform to the statute.

A Serviceman must submit his weights and standards to the state metrology laboratory for certification annually. A suitable substitute for Colorado certification is certification by another state's metrology laboratory if such certification is traceable to standards of the National Institute of Standards and Technology, and certification is less than a year old.

ENFORCEMENT

Both civil and criminal penalties are enforcement mechanisms available under this statute. The statute does authorize the Department to deny an application for license, revoke, suspend, refuse to renew, or to place a licensee on probation. The Department does, however, have the power to seek temporary and permanent injunctions and temporary restraining orders should a person violate this statute.

Section 35-14-124 sets forth procedures the Department must follow should they determine a measuring device is inaccurate. This sunset review is required to analyze this section of the statute. The procedures are as follows:

(1) When an inspector determines a device to be out-of-tolerance, he tags it with one of two colored tags. A **Blue Tag** is used when a device is "out-of-tolerance" (not working within specified guidelines) or is in need of minor repairs. It may remain in commercial use. The owner of the device has two days from the date shown on the tag to notify a serviceman. Repairs must be made within thirty days. If it is not, the device must be removed from commercial use. The Department has the authority to extend this time limit should circumstances justify it.

(2) A **Red Tag** indicates that a device has been "CONDEMNED." A condemned device is one that needs major repairs and must be removed from commercial use. There are actually two condemnation tags. One has a wire and lead seal and the other is a pressure sensitive tag. When the lead seal tag is placed on the device, it is unusable.

(3) If a device that needs a license has not obtained one, then the inspector seals the device with a **Yellow Tag**. That device may not be used commercially.

(4) The only seal permitted on a device, showing the condition of the device, is the official state seal. Only a representative of the Department may place stickers on devices regarding their accuracy.

The Department has the authority to tag and/or condemn a commercial measuring device, but it does not have the authority to revoke a license for a device.

CIVIL PENALTIES

Specific provisions of the civil penalties section of the statute are subject to this sunset review. These subsections deal with licensing servicemen, certifying weighers, and tagging measuring devices. The subsections apply to any person, his servant, or agent. These people are prohibited from doing the following:

1. Remove, break, or deface, any tag, seal, or mark placed on any device (except a serviceman or a department employee performing his duties);
2. Represent himself as a certified weigher without being one;
3. A certified weigher may not falsely certify the weight of any load;
4. A certified weigher may not refuse to weigh any article or thing which it is his duty to weigh;
5. A certified weigher may not refuse to state in any weight certificate anything required of him;
6. No person may hinder or obstruct the commissioner or his agent in the performance of his duties; and
7. No person may represent himself to be a licensed weighing or measuring device serviceman without being licensed.

If a person violates one of the above enumerated provisions, a fine may be levied against him. This fine may not be more than \$750.00 per day for each violation.

In the interest of consistency, the Department has promulgated regulations that set up a scheme by which it determines the amount of a civil penalty. The Department has three tables that chart civil penalties for the various offenses. Only two of those table are relevant to this review - Tables I and III. See Appendix B.

The Department has developed administrative procedures to manage how they handle statutory and regulatory violations. First, the Department gives the licensee notice of the violation. This is usually done in person by the field staff who discovers the violation. A fine is assessed at that time and the field staff has the authority to suspend the fine on the spot or not. The notice of the violation and fine is submitted to the measurement standards section office. The field staff attaches a note with a recommendation to suspend the fine or not.

The office creates a follow-up file that works as a record of the violation. At this point in the process, the violator may call the measurement standards section chief and discuss the violation. Usually, if the violator is coming into compliance with the statute, the section chief will suspend the fine. If the section chief and the violator cannot come to an agreement, the violator may either pay the fine or request a hearing. Since 1987, there have been only two hearings.

The violator has thirty days in which to pay the fine. If he does not, a second notice of the violation and fine is sent to the licensee. If the fine is not paid within sixty days, a third notice is sent. If the fine is not paid within ninety days, the Department turns the violations over to the Department of Collections in Administrative Services.

SUNSET ANALYSIS

The purpose of the Measurement Standards Act is to promote equity and fairness in transactions involving weighing or measuring. Every transaction involving the exchange of goods, property, and service is affected by some form of weights and measures. It is impossible to mention anything we eat, wear, or use that has not been weighed or measured. The Department carries out its purpose by maintaining state standards of weight and measure based on national standards, by licensing commercial weighing and measuring devices, by inspecting those devices, by regulating persons who work with those devices, and by enforcing the statutes, rules, and regulations governing their use.

Commercial Measuring Devices and Moisture-testing Devices

Maintaining accurate measuring devices is a fair trade issue. A person should reasonably expect to receive the quantity of goods represented by a measuring device. This expectation accrues to sellers as well as buyers; therefore, regulations that ensure reliability of measuring devices benefit both consumers and businesses. Most of the retail businesses who answered our survey regarding the necessity of licensing measuring devices share this belief (See survey results Appendix C).

The moisture content of grain is one factor that is looked at when grain is graded. The grade of a grain is critical to the processing uses of a commodity, and important to pricing and other market considerations. Therefore, there is a need for an objective party to ensure that moisture-testing devices used in commercial transaction are accurate.

License and Testing Fees

Colorado's general agriculture act requires the Department to "[a]nnually fix such inspection and license fees and service charges within maximum limits provided by law as may be necessary to pay the cost of service performed and reasonable reserves for contingencies, including cost of depository, account, disbursement, auditing, and rental of quarters and facilities furnished by the state; . . ." § 35-1-104(1)(e), C.R.S..

The Measurement Standards Act compels the commissioner of the Department to review and set the fees for special inspections annually at a rate not to exceed actual costs. Yet the statute specifically caps fees that may be charged at \$25.00 per hour plus mileage. § 35-14-127(12), C.R.S.

The Measurement Standards Act also compels the Department to annually certify length standards, precision weights standards, and volume standards that are submitted by servicemen, governmental entities, and other persons who use standards in their businesses. The statute demands "[t]he fee for any metrology service shall not exceed twenty dollars per hour. The commissioner shall set the fee annually at a rate not to exceed actual costs." § 35-14-128(2), C.R.S.

These caps not only do not exceed costs, they do not even cover the actual cost of the program. The Department has computed that in order to defray the cost of the metrology lab services, at this time, it needs to charge at least \$75.00 per hour. Because it is not able to collect enough money for its metrology lab services, they have to divert funds from other parts of the program in order to maintain a minimum standard acceptable to maintain its NIST certification. If the metrology lab loses this certification, Colorado will lose some highway funds. Furthermore, there is a six week backlog for standards that need to be tested. This waiting period is harmful to those servicemen and others who rely on these standards for business. It restricts a business's flexibility on how to allocate their resources. For a small business without several sets of standards, a six week wait during which they cannot use their standards is a severe hardship.

Although all license fees and testing fees collected by the measurement standard's program are deposited into the state General Fund, and the program is funded through the General Fund, it was clearly the intent of the legislature that license and testing fees should at least pay for the operational costs of this program. According to the Department, the amount of revenue the fees generate do not pay for the actual costs of the services they perform. The last time license fees were increased was 11 years ago in 1983.

Enforcement Procedures

The administrative procedures currently in place for dealing with inaccurate measuring devices and violations of the statute are fair, efficient, flexible and effective. The "tagging" system for scales gives businesses a chance to fix some inaccurate device that are not extremely out-of-tolerance (Blue Tag), but at the same time, it allows the business to continue to use them. If a measuring device is extremely out-of-tolerance, it is removed from use (Red Tag) until it is fixed. This tagging system is sensitive to business' need to keep a measuring device in use, but it also protects consumers by removing defective devices from commercial use.

The program has set up procedures which give the field agents parameters in which to operate, but it also allows them the flexibility to use their own judgment. This is reasonable because they are the people on the front-line, and see the effects of this regulation. The procedures in place allow for notice and input from the violator, and the section chief is accessible to licensees to discuss their situation. At the same time, not a lot of departmental resources are used to implement these administrative procedures. There have been only two hearings since 1987.

The Department relies more on civil penalties rather than actions against a licensee. They are acutely aware that should they revoke or suspend a license the business may have to close. An action against a license is drastic and the Department has found that compliance may be achieved without such draconian measures.

The Department is very cognizant of the unique problems that device owners in towns on the western slope and eastern plains, and it handles these problems in a reasonable and efficient manner. Most of the companies are located along the front range. At this time there is not enough business to justify them opening offices in less populated areas. As a consequence, it is very expensive to get a serviceman to repair devices in these areas because they are so far from the service companies' offices. Furthermore, it may take longer for the repair company to send someone to these areas.

In response to these problems, the Department tries to help owners in getting their devices repaired. For example, the inspector will tell an owner the names of other owners in the area who need to get their devices repaired so they go in together to pay for a serviceman. By coordinating their efforts, they can split the costs of travel and other expenses. An inspector will also tell the owner what he believes is wrong with the device and how it might be fixed. Many times the owner is able to make the repairs, so all that must be done is to remove the tag. The inspector will tell the owner how long he will be in the area and where he can be reached. If he can get the device repaired before he leaves the area, the inspector will return, recheck the device, and remove the tag if it passes.

The Department utilizes its employees in the most efficient way possible. When the equipment needed for large scale testing is out-of-service, the large scale inspector will join forces with a multi-inspector and help him with his testing. Thus, employees are not idle and they can increase the number of inspections done in another area.

Servicemen

This provision of the statute talks about "licensing" requirements for servicemen. However, Colorado does not have licensure in the true regulatory meaning of the word. Licensing is the most restrictive form of occupational regulation because it prohibits anyone from engaging in the regulated activities without a license. The statute allows any person to repair or service any measuring device; however, only servicemen and state inspectors may remove work order or condemned tags placed on devices. Because any person may legally repair a device, then true licensing does not exist. A more appropriate classification would be "governmental certification."

RECOMMENDATIONS

The Department licenses commercial measuring devices, moisture-testing devices, servicemen, and salesmen. It certifies weighmasters. OPR recommends that licensure of commercial measuring devices, and moisture-testing devices continue. We recommend continued certification of weighmasters, and we recommend that licensure of servicemen be changed to certification. There does not need to be a separate license or certification of salesmen.

RECOMMENDATION 1: CONTINUE LICENSING COMMERCIAL MEASURING DEVICES BY THE COLORADO DEPARTMENT OF AGRICULTURE. § 35-14-127.

We believe that it is in the public interest to continue licensing commercial measuring devices by the Colorado Department of Agriculture.

Weights and measures are abstract relational concepts that can only be demonstrated through man-made devices. An efficient society requires a standardized system by which commodities are weighed and/or measured, and it requires that the instruments used for this system are properly calibrated. An individual cannot, without a measuring device of his own, determine the accuracy of someone else's measurements.

Accurate measuring devices promote equity and fairness in commercial transactions which protects both consumers and businesses. Government regulation and inspection of such devices is needed to provide objective third party verification of device accuracy. Therefore, the Department should continue to license and inspect commercial measuring devices.

Most of the feedback OPR received from businesses surveyed supported continuation of this program. They believed government inspection of measuring devices was necessary. They supported licensing fees if they helped pay for inspections. They liked the fact that they could point out to their customers that someone was checking on them to ensure their honesty. The businesses also realized that they could be losing money by using inaccurate devices. Some business people supported the inspection program, but they did not like paying for a license. They felt they were already paying enough in the form of taxes and other fees.

See Appendix C for survey results.

RECOMMENDATION 2: CONTINUE LICENSING MOISTURE-TESTING DEVICES BY THE COLORADO DEPARTMENT OF AGRICULTURE. § 35-14-129.

We believe it is in the public interest to continue licensing moisture-testing devices.

These devices are essential in determining the moisture content of agricultural commodities. As with the Farm Products and Commodity Handler Acts, this statute is very important to the agricultural community.

The moisture content of agricultural commodities, such as grain, is important to classifying it under the correct standard and grade. Standards and grades are factors used to determine a commodities price. Furthermore, the moisture content of grain can determine for what the grain may be used, i.e. human consumption vs. cattle feed. Therefore, it is an important aspect of a commercial transaction. An inaccurate moisture-testing device can lead to both purposeful and inadvertent mistakes.

The reasoning applied in licensing and inspecting measuring devices is the same for moisture-testing devices. Neither weight nor moisture content can be determined without man-made instruments. If we are to rely on these instruments as a measurement standard for the exchange of goods, we must regulate them so that we may rely on what they tell us.

RECOMMENDATION 3: CONTINUE CERTIFICATION OF WEIGHERS OF PUBLIC SCALES OR WEIGHMASTERS, BUT AMEND THE STATUTE TO REMOVE INAPPROPRIATE QUALIFICATION REQUIREMENTS; AND, GIVE THE COMMISSIONER AUTHORITY TO REVOKE, REFUSE RENEWAL, SUSPEND, AND RESTRICT CERTIFICATION, AND PLACE A WEIGHER ON PROBATION. § 35-14-122.

We believe it is the public interest to continue to certify weighers of public scales.

Certified Weighers are components of commercial transactions when a public scale is involved, so it is important that they know what they are doing. Truckers rely on public scales to find out the weight of their load; farmers and agricultural products dealers who do not own their own scales rely on public scales to weigh their goods; and anyone who needs to know how much something weighs relies on public scales.

The Colorado Department of Highways requires that contractors provide their own scales (or use commercial scales) and that only certified weighers operate them. Therefore, it is important that such a job classification have minimum qualification requirements.

The statute needs to be amended so that inappropriate and obsolete requirements are removed. Currently, the statute requires a certified weighmaster to be (1) A citizen of the United States or a person who has declared his intention of becoming a citizen; (2) A resident of Colorado; and (3) Of good moral character.

All three of these requirements are inappropriate and irrelevant to a person's ability to do a good job as a certified weighmaster. Not everyone who is working in this country legally is a citizen or is intending to become a citizen. Not everyone who has legitimate reasons for working in Colorado is a resident of Colorado. The "good moral character" requirement is too vague to enforce. Therefore, we recommend that these requirements be removed from the statute.

The statute does not allow the Department to revoke, suspend, refuse renewal, restrict the certification of, or place a certified weighmaster on probation. To ensure competency of certified weighers, the Department should have the authority to take action against those persons who either violate the statute or for some other reason should not be certified weighers.

RECOMMENDATION 4: REMOVE ALL LICENSING, INSPECTING, AND METROLOGY LAB FEES FROM THE STATUTE AND GIVE THE DEPARTMENT OF AGRICULTURE COMMISSION AUTHORITY TO SET FEES. §§ 35-14-127 AND 35-14-128

All licensing fees, inspecting fees, and metrology lab fees are paid into the General Fund, unlike many regulatory programs which are cash funded. The amount for licenses are fixed in statute and have been enumerated earlier in this report. The last time any of these fees were changed was in 1983.

In the interest of brevity, detailed arguments for removal of fees from the statute will not be repeated in this analysis except to point out that it was the intent of the legislature that the Department of Agriculture generate enough revenue to pay for the cost of the services it performs. However, with the fee caps imposed by the statute the Department is not able to cover its costs, but it must still continue to perform its statutory duties. Therefore, the fees as set in the statute are not accomplishing their purpose.

It is not a very efficient use of governmental resources to require legislation in order to adjust fees. The legislative process is a very time consuming and expensive process. It makes more sense to delegate the responsibility to set license fees to the Department of Agriculture Commission. The state agricultural commission is comprised of members who are active in the agricultural industry, and who are appointed by the governor. Two must be appointed from each of the state's four agricultural districts. The industry's concerns and interests are represented by the commission; therefore, the possibility of a fee "fiasco" is slight.

Furthermore, the commission meetings are open to the public and it must meet at least once every three months. This process affords any interested person the opportunity for input into any rules and regulations the commission establishes. It works as a check and balance against any inappropriate exercise of regulatory authority.

RECOMMENDATION 5: AMEND THE STATUTE TO REQUIRE THAT ALL "TYPES" (MODELS) OF COMMERCIAL MEASURING DEVICES OBTAIN A CERTIFICATE OF CONFORMANCE FROM THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY BEFORE THEY MAY BE SOLD AND/OR USED IN COLORADO.

All commercial measuring devices used in Colorado must first be certified by the Department. Currently, the Measurement Standards Act adopts, by reference, NIST Handbook 44 as law for specifications and tolerances for commercial measuring devices. § 35-14-105. However, the Department lacks the resources to evaluate whether components of certain designs meet the technical aspects of this Handbook; therefore, it has no way of confirming whether the model submitted complies with the handbook. Furthermore, the statute does not state that Colorado requires measuring device "types" (which means the designs and models of a particular measurement system, or instrument) be evaluated before they may be certified for use in Colorado.

To overcome this predicament, the Department implemented an administrative policy to certify only devices that have received a Certificate of Conformance from NIST. However, it is questionable whether the Department really has the statutory authority to enforce this requirement. So far there have not been any legal problems with scale companies challenging this policy, but the potential for a problem exists.

The Department does not want to, nor is it necessary, for them to evaluate "types" when NIST already does it and issues Certificates of Conformance. It would be more efficient and more cost effective for the Department to recognize NIST's evaluations, and require all commercial measuring devices sold and/or used in Colorado to obtain a Certificate of Conformance from NIST.

RECOMMENDATION 6: AMEND THE MEASUREMENT STANDARDS ACT TO GIVE THE COMMISSIONER THE POWER TO REVOKE, RESTRICT, REFUSE RENEWAL, OR SUSPEND A COMMERCIAL MEASURING DEVICE, MOISTURE-TESTING DEVICE LICENSE, AND SERVICEMAN CERTIFICATION. THE COMMISSIONER ALSO NEEDS THE POWER TO DENY AN APPLICATION FOR ANY OF THESE LICENSES OR CERTIFICATIONS.

Pursuant to § 35-14-124, the Department has the authority to tag a device and allow its use to be continued until it is fixed. It also has authority to tag a measuring device, CONDEMN it, in which case it is removed from commercial use until it is fixed. However, the Department does not have any remedies against the license even if the owner of the device has violated the statute.

In most cases, tagging a device and requiring the device to be fixed is adequate protection for the consumer. There are times, however, when that remedy is not enough, such as in the case of fraud. Bait and Switch operators have commercial measuring devices as part of their business. In order to keep undesirable business people from operating in Colorado, the Department should have the ability to deny applications. OPR recommends that the following provision be added:

Disciplinary powers - licenses: The commissioner may deny any application for a license, or may refuse to renew a license, or may revoke or suspend a license, or may place a licensee on probation, as the case may require, if the licensee or applicant has:

- (a) Violated any of the provisions or violated any of the rules and regulations promulgated by the commissioner;***
- (b) Been convicted of a felony under the laws of this state, or of any other state, or of the United States; except that, in considering a conviction of a felony, the commissioner shall be governed by the provisions of section 24-5-101, C.R.S.;***
- (c) Committed fraud or deception in the procurement or attempted procurement of a license;***
- (d) Failed to comply with any lawful order of the commissioner concerning the administration of this statute;***
- (e) Been convicted of deceptive trade practices under the laws of this state or any other state, or of the United States;***

(f) Use a commercial measuring device or moisture-testing device in deceptive trade practices under the laws of this state, any other state, or the United States.

(2) All proceedings concerning the denial, refusal to review, revocation, or suspension of a license or the placing of a licensee on probation shall be conducted pursuant to the provisions of article 4 of title 24, C.R.S.

(3) Any previous violation of the provisions of this statute by the applicant or any person connected with him in the business for which he seeks to be licensed, or in the case of a partnership or corporation applicant any previous violations of the provisions of this statute by a partner, officer, director, or stockholder of more than thirty percent of the outstanding shares, is sufficient grounds for the denial of a license.

RECOMMENDATION 7:

(A) AMEND THE SECTION OF THE MEASUREMENT STANDARDS ACT THAT GOVERNS LICENSING REQUIREMENTS FOR SERVICEMEN AND SALESMEN. CHANGE LICENSURE OF SERVICEMEN TO CERTIFICATION OF SERVICEMEN; REPEAL LICENSURE OF SALESMEN; REPEAL ADMINISTRATIVE PROCEDURES FROM THE STATUTE AND PUT INTO REGULATIONS. § 35-14-123.

Although the statute refers to the "licensing requirements for servicemen and salesmen," it is not licensure in the true regulatory meaning of the word. Licensing is the most restrictive form of occupational regulation because it prohibits anyone from engaging in the activities covered by the licensing statute without permission from a government agency. If the government revokes a person's license, the ex-licensee can no longer work in his profession.

The Measurement Standards Act allows any person to repair or service any measuring device; however, only servicemen and state inspectors may remove work orders or condemned tags placed on devices. If any person may repair a device, then true licensing does not exist. A more appropriate designation for government regulated servicemen would be statutory certification. Unlike licensure, the law does not prohibit individuals from engaging in the regulated occupation. However, it prohibits some from using a given title or from holding themselves out to the public as being "certified."

The salesman and installer license requirement should be eliminated because they are duplicative and unnecessary. Furthermore, the statute does not require any minimum qualifications to become a salesman or installer. In real world application, there is no distinction between servicemen, installers, and salesmen. Plus, it is the business that holds the license, not the individual; therefore, it is not necessary to distinguish between the duties of its employees. A random survey of licensed service companies in Colorado revealed that most companies did not differentiate between salesmen, servicemen, and installers. When asked how many servicemen, installers, etc. they employed, they said that their employees did all three.

Therefore, licensing salesmen and installers is unnecessary. The only statutory requirements for salesmen/installers concern proper installation of devices and proper notification of installation procedures. The statute would still require proper installation and proper notification of installation to the Department. One licensing category for "serviceman" is sufficient to respond to the way the marketplace actually works.

(B) IF LICENSURE OF SERVICEMEN IS REPEALED AND CHANGED TO CERTIFICATION, § 35-14-132(m) SHOULD BE CHANGED TO REFLECT THAT AMENDMENT.

Currently, a person is subject to civil penalties if he acts as or represents himself to be a licensed weighing or measuring device serviceman without being so licensed. If licensure is repealed and it is changed to certification, the wording of this provision should be "*Act as or represent himself to be a certified weighing or measuring device serviceman without being so certified.*"

RECOMMENDATION 8: REPEAL CERTAIN SECTIONS OF THE MEASUREMENT STANDARDS ACT AND ALLOW THE DEPARTMENT TO PROMULGATE REGULATIONS TO REPLACE THEM.

The Measurement Standards Act is much too specific, and reads like regulations in some places instead of a statute. The following provisions should be repealed and promulgated into regulations.

Technology changes. As it changes, some statutory sections may become obsolete. It makes more sense to put any technical requirements in regulation where they may be amended or changed easier. The Department should not have to go through the legislative process just to keep up with technological improvements.

The other provisions deal with paperwork and other procedures. It is too cumbersome to set these administrative matters in statute. If they are not working, or they are no longer necessary, the Department is not able to change its operation without proposing statutory amendments.

§ 35-14-122(1)(b) - This provision states how big a sign must be and where it must be placed in the window of a public scale house.

§ 35-14-122(2)(a) - This provision states what information must be on a certificate of correct weight.

§ 35-14-122(2)(b) - This provision requires certified weighers to keep a daily transaction register, and the information that must be in it.

§ 35-14-122(3) - This provision states the proper procedures on how vehicles should be weighed.

§ 35-14-122(5) - This provision states that anyone who does public weighing for a fee is required to keep a complete record of each such weighing, and that records must be kept for two years.

§ 35-14-122(6)(a) - This provision sets forth how commodities must be weighed and what certificates or tickets must be issued as part of the transaction.

§§ 35-14-123(3)-(9) - These sections set out the administrative requirements with which servicemen and salesmen must comply.

§ 35-14-127(3)-(10) - These sections set out the license fees for each type of measuring device and the procedures that must be followed in the case of a special test.

§ 35-14-127(12) - This provision sets out how the fee for a special test should be calculated.

§§ 35-14-128(1)-(3) - These provisions set out the requirements that weights and measures must meet, in what condition they must be submitted to the Department for calibration, what fees the Department may charge for calibrating weights and measures, and it gives the Department the authority to seize any weight or measure that cannot be repaired.

§§ 35-14-129(2)-(6) - These provisions specify what degree of accuracy a moisture-testing device must meet, how a serviceman must install a device, and how often one must be tested by the Department. The only reason these provisions were in the statute was because in 1983, standards for moisture-testing devices were not set forth in NIST handbooks. These standards are now in the handbooks. The statute requires that all devices meet standards set forth in the handbooks. These provisions are no longer necessary; therefore, they should be repealed.

EDITORIAL RECOMMENDATION: AMEND § 35-14-128(1) AND SUBSTITUTE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY FOR NATIONAL BUREAU OF STANDARDS.

Congress replaced the National Bureau of Standards with the National Institute of Standards and Technology in 1988. The statute was repealed and reenacted in 1983; therefore, the change has not been reflected in the statute. In order to update the statute, and for the sake of clarity, the substitution should be made.

APPENDIX A - SUNSET STATUTORY EVALUATION CRITERIA

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- IX. Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

APPENDIX B - CIVIL PENALTY TABLES

TABLE I

	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
1	\$ 0	\$ 10.	\$ 20.						
2	\$ 10.	\$ 20.	\$ 40.	\$20.	\$40.	\$80.			
3	\$ 20.	\$ 40.	\$ 80.	\$40.	\$80.	\$160.	\$80.	\$160.	\$240.

TABLE III

	FIRST OFFENSE			SECOND OFFENSE			THIRD OFFENSE		
	A	B	C	A	B	C	A	B	C
1	\$50.	\$100.	\$150.						
2	\$100.	\$200.	\$300.	\$200.	\$300.	\$400.			
3	\$200.	\$300.	\$400.	\$300.	\$400.	\$500.	\$500.	\$600.	\$750.

Interpreting the Tables

Each section of the statute corresponds to one of the tables. A violation of a particular statutory section determines which table the Department looks at when deciding the amount of the civil penalty. Specific to this review, the civil penalties for violating sections 35-14-124, 127, or 129 are determined by looking at Table I. The civil penalties for violating sections 35-14-122, 123, 131(2)(a), (d), (j), (l) and (m) are determined by looking at Table III.

The lines of the tables correspond to the "cause of violation." Line 1 of the relevant table is applicable when the person who committed the violation is ignorant of the law. Line 2 of the relevant table is applicable when the violation is due to negligence. Line 3 of the relevant table is applicable when the person willfully committed a violation or has committed the same violation three or more times within a twelve month period.

The columns of the tables correspond with the "gravity of violation." When the violation is of minimal gravity, the penalty is determined from Column A of the applicable table. When the violation is of moderate gravity, the penalty is determined from Column B of the applicable table. When the violation is of great gravity, the penalty is determined from Column C of the applicable table. When deciding the "gravity of violation," the Department considers the following factors: (1) potential monetary consequences; (2) potential personal injury; (3) potential property damage; (4) degree of inconvenience or deception to a buyer; and (5) degree of disregard for the law.

The amount of the penalty is determined by the nature of the violation, the gravity of the violation, and the number of previous violations. The department has three tables that correspond to the section of the statute violated. The tables that are relevant to the sections under review are Tables I and II. If a violator did not know about the statutory requirement, the penalty is determined from line 1. If the violation was due to negligence, the penalty is determined from line 2. If the violation was willful, or has committed the same violation three or more times within a 12 month period, the penalty is determined from line 3. All violations after the second violation are construed to be willful.

The last element in determining the amount of the civil penalty is the frequency of recurrence of the same violation. The more frequent a person commits the same violation, the greater the penalty shall be. If a person commits the same violation more than three times in twelve months, the penalty for the third violation is assessed. Additionally, the person is subject to a restraining order or injunction. The timetable for determining the frequency of violations is twelve months. If a person has not committed the same offense in twelve months, the next identical offense is considered a first offense. This twelve month limitation does not apply to someone who has committed the same offense three times in five years. That person is subject to the penalty for a third offense.

APPENDIX C - SURVEY RESULTS

Approximately 567 questionnaires were mailed to retail establishments.

	Yes	No	No Opinion
Should measuring devices be licensed?	40	25	9
Should measuring devices be inspected?	60	9	5

APPENDIX D - ORGANIZATIONAL INFORMATION

LARGE SCALE INSPECTORS

1	Agricultural Program Specialist V
1	Agricultural Program Specialist III
5	Agricultural Program Specialist II
1	Agricultural Program Specialist Intern
2	Administrative Assistant IV
1	Engineer/Physical Science Tech. III
1	Engineer/Physical Science Tech. II
This Section Has 12 FTEs Assigned To It	

LICENSES ISSUED

FY	# of Scales Licensed	Certified Weighers (including renewals)	Public Scale COs	Servicemen Licensed
88-89	9893	152	22	?
89-90	9983	143	23	?
90-91	9793	238	22	?
91-92	9557	192	23	105
92-93	9738	260	36	70

DISCIPLINARY ACTIONS

FY	Violations	Stop Sale	Hearings
88-89	421	9813	0
89-90	354	9735	0
90-91	553	8903	1
91-92	350	7746	0
92-93	207	8200	1

APPENDIX E - SUMMARY OF STATE LAWS

(As of July 1992)

State	Laws		Regulations	
	Weights And Measures Law	Weighmaster Law Or Regulation	Type Evaluation	Registration of Service Agencies
Alabama	yes	yes	yes	yes
Alaska	yes	No	yes*	yes
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	No	yes	yes
California	yes	yes*	yes	yes*
Colorado	yes	yes	no	yes
Connecticut	yes	yes	yes	yes*
Delaware	yes	yes	No	yes*
District of Columbia	yes	yes	No	No
Florida	yes	No	No	yes
Georgia	yes	yes*	yes	yes
Hawaii	yes	yes	yes	yes
Idaho	yes	yes	No	yes
Illinois	yes	No	yes	yes
Indiana	yes	yes	No	No
Iowa	yes	yes*	yes	yes*
Kansas	yes	No	yes	yes
Kentucky	yes	No	No	yes
Louisiana	yes*	yes*	No	yes*
Maine	yes	yes	No	yes
Maryland	yes	No	yes	No
Massachusetts	yes*	yes*	yes	No
Michigan	yes	yes	yes*	yes*
Minnesota	yes	No	No	yes
Mississippi	Yes	Yes	Yes	Yes
Missouri	yes	No	Yes	yes
Montana	yes	No	No	yes
Nebraska	yes	No	yes*	yes
Nevada	yes	yes	No	yes
New Hampshire	yes	yes	Yes	Yes
New Jersey	yes	yes	yes*	yes*
New Mexico	yes	yes	No	yes

KEY:

Yes Automatically adopted and updated on an annual basis
yes Law or regulation in force, NCWM standard used as basis of adoption but from an earlier year
yes* Law or regulations in force, but not based on NCWM standard
No No law or regulation
no No law or regulation, but NCWM standard is used as a guideline

State	Laws		Regulations	
	Weights And Measures Law	Weighmaster Law Or Regulation	Type Evaluation	Registration of Service Agencies
New York	yes	yes	yes	No
North Carolina	yes	yes*	yes	yes
North Dakota	yes	yes	No	yes
Ohio	yes	No	Yes	yes
Oklahoma	yes	No	yes	yes*
Oregon	yes	No	yes	No
Pennsylvania	yes	yes*	yes*	No
Puerto Rico	yes	yes	yes	yes
Rhode Island	yes*	No	No	No
South Carolina	yes	yes*	No	yes
South Dakota	yes	No	yes	yes
Tennessee	yes	yes	No	yes
Texas	yes	yes*	No	yes
Utah	yes	No	yes	yes
Vermont	yes*	yes*	No	yes
Virginia	yes	yes	yes	yes*
Washington	yes	yes	No	No
West Virginia	yes	No	No	No
Wisconsin	yes	No	No	No
Wyoming	yes*	No	No	yes
Totals:				
Yes	3	2		3
yes	44	20		29
yes*	5	10		9
No	0	20		11
no	0	0		0

KEY:

Yes Automatically adopted and updated on an annual basis
yes Law or regulation in force, NCWM standard used as basis of adoption but from an earlier year
yes* Law or regulations in force, but not based on NCWM standard
No No law or regulation
no No law or regulation, but NCWM standard is used as a guideline

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